

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2021-0023 - CORRECTED VERSION***

**TO ADOPT DROUGHT-RELATED EMERGENCY REGULATION TO ADDRESS
SEVERE WATER SHORTAGES IN THE RUSSIAN RIVER WATERSHED**

WHEREAS:

1. On April 21, 2021, Governor Gavin Newsom declared a drought state of emergency in Mendocino and Sonoma counties due to drought conditions in the Russian River watershed ([April 2021 Proclamation](#)). The April 2021 Proclamation finds that it is necessary to act expeditiously to mitigate the effects of drought conditions in the Russian River watershed, both to ensure the protection of health, safety, and the environment and to prepare for potential sustained drought conditions. The April 2021 Proclamation directs the State Water Board to address the acutely dry conditions in the Russian River watershed and to consider (a) modifying requirements for reservoir releases or diversion limitations in the watershed to ensure adequate, minimal water supplies for critical purposes; and (b) adopting emergency regulations to curtail water diversions when water is not available at water rights holders' priority of right or to protect releases of stored water. As it pertains to these emergency regulations, the April 2021 Proclamation suspends the California Environmental Quality Act (CEQA) to the extent necessary to address the impacts of the drought in the Russian River watershed;

2. The Russian River watershed is experiencing extremely dry drought conditions in 2021, which is its second consecutive year of drought conditions. Cumulative rainfall in the watershed, as measured at the Ukiah Municipal Airport since the beginning of the water year on October 1, 2020, is just 13.12 inches. This cumulative precipitation is the lowest recorded at this location, which has an average of approximately 35 inches of cumulative rainfall by June 1. As of May 27, 2021, Lake Mendocino held just 35,562 acre-feet of its authorized storage capacity of 122,500 acre-feet, its lowest storage level ever recorded at this time of year. As of May 27, 2021, Lake Sonoma, which has an approximate capacity of 381,000 acre-feet, also recorded its lowest storage level ever for this time of year at 141,219 acre-feet. On April 20, 2021, the Mendocino County Board of Supervisors declared a local emergency and imminent threat of disaster due to drought conditions, and the Sonoma County Board of Supervisors declared a drought emergency on April 27, 2021;

*Added Resolve #5 that was added and adopted at the Board Meeting.

3. There is an urgent need to address severe water shortages in the Russian River watershed to ensure continued human health and safety supplies. Within the Russian River watershed, there are twenty-five community water systems regulated by the State Water Board's Division of Drinking Water that serve a reported population of 61,000 users. Of these systems, twenty have domestic water sources on or within immediate proximity of the river's mainstem. Additionally, Sonoma County Water Agency (Sonoma Water) acts as a wholesale water system that supplies domestic water to eight cities and districts serving over 600,000 people. The California Water Code declares water supplies for consumption, sanitation, and cooking as a human right (Wat. Code, § 106.3); that domestic use is the highest priority of water use (Wat. Code, § 106); and provides water suppliers with authority to declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection. (Wat. Code, § 350.) Additional efforts are needed in the Russian River watershed this year to ensure that these suppliers are able to continue to access water for these statutorily defined uses under critical drought conditions.
4. Sonoma Water holds water rights authorizing the storage, diversion and use of water impounded at Coyote Valley Dam, the dam that creates Lake Mendocino. State Water Board Decision 1610 requires Sonoma Water to release water from Lake Mendocino to ensure that specified flow requirements are met along the mainstem of the Upper Russian River until its confluence with Dry Creek. Decision 1610 requires maintenance of a minimum flow 25 cfs below Coyote Valley Dam on the East Fork of the Russian River and a minimum flow of 25 cfs during critical water supply conditions in the Russian River between its confluence with the East Fork Russian River and its confluence with Dry Creek.
5. Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) are listed as endangered under the state and federal Endangered Species Acts, and CCC steelhead (*Oncorhynchus mykiss*) (CCC steelhead) are listed as threatened under the federal Endangered Species Act. Since being listed, CCC coho salmon populations have continued to decline and the California Department of Fish and Wildlife (CDFW) and the National Marine Fisheries Service (NMFS) consider CCC coho salmon to be among the species at highest risk of extinction in the country.
6. Water supply and flood control operations in the Russian River watershed are subject to a 2008 Biological Opinion by the National Marine Fisheries Service (NMFS) to promote the survival and recovery of CCC steelhead, CCC coho salmon, and CCC Chinook salmon. Although the Biological Opinion included

a Reasonable and Prudent Alternative directing Sonoma Water to petition the State Water Board to change the minimum flows required by Decision 1610 under normal water supply conditions, it did not find a need to change the 25 cfs flow required by Decision 1610 during critical water supply conditions.

7. In Temporary Urgency Change Petitions (TUCPs) filed by Sonoma Water on May 14, 2021, Sonoma Water stated that preserving 20,000 acre-feet in storage by October 1 is the minimum storage level to best ensure adequate supply for human health and safety needs and to meet minimum instream flow requirements, should dry conditions persist through the end of the year. Modeling projections prepared by Sonoma Water show that, should current hydrologic conditions and typical losses from the river related to diversions, evaporation, and seepage persist until October 1, Lake Mendocino would empty at some point in the next year in 10 out of the 108 years of historical conditions used to simulate potential future conditions. This status quo presents an unacceptable risk given Lake Mendocino's role in supplying water necessary for both minimum human health and safety and protected fisheries along the Russian River upstream of the confluence with Dry Creek. 20,000 acre-feet remaining in storage by October 1 is a reasonable storage target to reduce the likelihood of Lake Mendocino emptying.
8. Sonoma Water's Permit 12947A requires that it release water from Coyote Valley Dam to meet the demands of junior appropriators in the Russian River Valley in Sonoma County not to exceed 10,000 acre-feet per year, except to the extent that retention of stored water is necessary to ensure satisfaction of the minimum streamflows required by the permit. Given the severe shortage in Lake Mendocino storage levels, the entirety of the 10,000 acre-feet reservation is unavailable for junior appropriators because the stored water is necessary to insure satisfaction of the instream flow requirements.
9. Under present conditions, Lake Mendocino storage releases comprise virtually all water flowing in the mainstem of the Upper Russian River, and there is no natural or abandoned flow in the Upper Russian River, except for extremely limited inflow from the Potter Valley Project and tributaries of the Upper Russian River.¹ Meanwhile, Sonoma Water has had to increase its releases from Lake Mendocino to offset reductions in Russian River stream flows due to diversions by other water users whose rights are to natural or

¹ See Basin-Wide Estimate of Monthly Supply vs. Demand – Upper Russian River 2021, https://www.waterboards.ca.gov/drought/russian_river/; Sonoma County Water Agency, June 11, 2021 Hydrologic Status Report, p. 10 (USGS East Fork gage at Calpella and Lake Mendocino calculated inflow), *available at* <https://www.sonomawater.org/tucp>.

abandoned flow. These releases are emptying Lake Mendocino more rapidly at a time when its storage levels already are dangerously low. What little natural or abandoned flow exists is needed to meet minimum health and safety needs.

10. Because there is almost no natural or abandoned flow in the Upper Russian River, and Sonoma Water releases from Lake Mendocino are necessary to meet instream flow requirements, no water user would have a legal right to divert from the mainstem of the Upper Russian River absent enactment of the emergency regulations appended to this Resolution.
11. On March 22, 2021, the State Water Board mailed [Letters Regarding Ongoing Dry Conditions in Most California Watersheds](#) to all water right holders and agents regarding ongoing dry conditions in most California watersheds. These letters encouraged water right holders to plan and prepare for potential water shortages later this year. The letters also notified water right holders that accurate and timely reporting of water use data will help to provide critical information needed to manage the state's water resources;
12. On May 25, 2021, the State Water Board issued [Notices of Water Unavailability](#) for 2021 to all post-1914 water right holders in the Russian River watershed upstream of the confluence of Dry Creek and the Russian River, referred to as the Upper Russian River. The notices were developed by compiling water rights demand data from annual water use reports submitted to the State Water Board and comparing those demands against available supplies. The comparison of available and forecasted supplies against water rights demands allows a determination of which water rights priorities will not be satisfied during times of shortage. The State Water Board also issued [letters to all pre-1914 appropriative right holders and riparian right holders](#) upstream of the Dry Creek confluence warning of dry conditions, encouraging conservation of water, and stating that the State Water Board is developing emergency regulations that may affect their water rights;
13. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to “prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter’s priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports”;

14. Article X, section 2 of the California Constitution declares that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that “what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.” (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.) In applying the reasonableness doctrine, the State Water Board has a duty to consider the state’s public trust resources, including fisheries. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (*Peabody v. Vallejo* (1935) 2 Cal.2d 351.) Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency.

15. Adoption of an emergency regulation is necessary to address the immediate and dire water shortages in the Russian River watershed. Absence of natural flow accounts for the concomitant need to curtail diversion and use of water from the Russian River based on priority of right and to prevent the diversion of releases of stored water for which downstream users do not have a basis of right. To the extent quantifiable water is conserved in storage as a result of curtailment of diversions of extremely limited inflows of abandoned water from the Potter Valley Project and tributaries of the Upper Russian River, the storage of water is necessary to protect human health and safety needs. An emergency regulation will ensure the State Water Board can act in a timely manner to enforce the water right priority system with respect to all water right holders and this is the gravamen of the emergency regulation. However, in limited circumstances, diversions for minimum human health and safety needs, where there is no feasible supply, may be excepted from curtailment orders. This exception recognizes that these uses are reasonable in this time of dire shortage and safeguards the human right to water for residents of Sonoma and Mendocino Counties. While the entire watershed is experiencing unprecedented drought conditions, the severity of present and anticipated storage levels in Lake Mendocino warrant requiring the extremely limited amount of natural and abandoned flows in the Upper Russian River watershed to support minimum health and safety needs for this water year as well as during an on-going drought emergency in 2022.

16. Although Lake Sonoma is not at immediate risk of emptying, storage levels are at unprecedented lows for this time of year. Given the low cumulative precipitation in the watershed, emergency regulations to support and enforce findings that supplies are insufficient to meet water right demands in the Russian River downstream of Dry Creek, and in the Dry Creek watershed, are also necessary to ensure protection of senior water right holders and public trust resources.
17. The State Water Board is adopting the emergency regulation due to severe emergency drought conditions and the need for prompt action;
18. Emergency regulations adopted under Water Code section 1058.5 remain in effect for up to one year; and
19. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to staff.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 877, 877.1, 877.2, 877.3, 877.4, 877.5, 877.6, 878, 878.1, 878.1, 879, 879.1, and 879.2, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights, or their designees may make such changes;
4. This regulation shall remain in effect for one year after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5; and

5. The State Water Board (1) continues to support cooperative efforts to meet needs within the Russian River watershed and to develop more precise methodologies for determining water availability; and (2) directs staff to continue work with stakeholders on improvements in water availability and use within the Russian River watershed based on its unique hydrology to support curtailments in future years or that could support voluntary efforts to meet storage targets this year or avoid curtailments.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 15, 2021.

AYE: Chair E. Joaquin Esquivel
 Vice Chair Dorene D'Adamo
 Board Member Tam M. Doduc
 Board Member Sean Maguire
 Board Member Laurel Firestone

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

Curtailment of Diversions to Protect Water Supplies and Threatened and Endangered Fish in the Russian River Watershed

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In Title 23, Division 3, Chapter 2, Article 24, add Sections 877, 877.1, 877.2, 877.3, 877.4, 877.5, 877.6, 878, 878.1, 879, 879.1 and 879.2 to read:

Article 24. Curtailment of Diversions to Protect Water Supplies and Threatened and Endangered Fish in the Russian River Watershed

§ 877 [Reserved]

§ 877.1 Definitions

- (a) "Curtailment Order" refers to an order from the Deputy Director of the Division of Water Rights ordering a water right holder to cease diversions.
- (b) "Deputy Director" refers to the Deputy Director of the Division of Water Rights, or duly authorized designee, at the State Water Resources Control Board.
- (c) "Flood Control District" refers to the Mendocino County Russian River Flood Control and Water Conservation Improvement District.
- (d) "Lower Russian River" refers to the surface waters, including underflow and subterranean streams, of the Russian River downstream of the confluence of Dry Creek and the Russian River.
- (e) "Lower Russian River Watershed" refers to the area in Sonoma County that drains towards Dry Creek and the area downstream of the confluence of the Russian River and Dry Creek that drains towards the outlet of the Russian River to the Pacific Ocean.
- (f) "Mainstem of the Upper Russian River" refers to the surface waters, including underflow and subterranean streams, of the Upper Russian River downstream of Lake Mendocino and upstream of the confluence of Dry Creek and the Russian River.

(g) “Minimum human health and safety needs” refers to the amount of water necessary for prevention of adverse impacts to human health and safety, for which there is no feasible alternate supply. “Minimum human health and safety needs” include:

- (1) Indoor domestic water uses including water for human consumption, cooking, or sanitation purposes. For the purposes of this article, water provided outdoors for human consumption, cooking, or sanitation purposes, including but not limited to facilities for unhoused persons or campgrounds, shall be regarded as indoor domestic water use. As necessary to provide for indoor domestic water use, water diverted for minimum human health and safety needs may include water hauling and bulk water deliveries, so long as the diverter maintains records of such deliveries and complies with the reporting requirements of Section 879, and so long as such provision is consistent with a valid water right.
- (2) Water supplies necessary for energy sources that are critical to basic grid reliability, as identified by the California Independent System Operator, California Public Utilities Commission, California Energy Commission, or a similar energy grid reliability authority.
- (3) Water supplies necessary to prevent tree die-off that would contribute to fire risk to residences, and for maintenance of ponds or other water sources for fire fighting, in addition to water supplies identified by the California Department of Forestry and Fire Protection or another appropriate authority as regionally necessary for fire preparedness.
- (4) Water supplies identified by the California Air Resources Board, a local air quality management district, or other appropriate public agency with air quality expertise, as necessary to address critical air quality impacts to protect public health.
- (5) Water supplies necessary to address immediate public health or safety threats, as determined by a public agency with health or safety expertise.
- (6) Other water uses necessary for human health and safety which a state, local, tribal or federal health, environmental, or safety agency has determined are critical to public health and safety or to the basic infrastructure of the state. Diversifiers wishing to continue diversions for these uses must identify the health and safety need, include approval or

similar relevant documentation from the appropriate public agency, describe why the amount requested is critical for the need and cannot be met through alternate supplies, state how long the diversion is expected to continue, certify that the supply will be used only for the stated need, and describe steps taken and planned to obtain alternative supplies.

- (h) "State Water Board" refers to the State Water Resources Control Board.
- (i) "Upper Russian River" refers to the surface waters, including underflow and subterranean streams, of the Russian River upstream of the confluence of the Russian River and Dry Creek and includes both the East and West Forks of the Russian River.
- (j) "Upper Russian River Watershed" refers to the area located in Mendocino and Sonoma Counties that drains towards the confluence of Dry Creek and the Russian River.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art., X § 2; Sections 100, 100.5, 104, 105, 106.3, 275, 1058.5, Water Code; *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183.

§ 877.2 Emergency Curtailments Due to Lack of Water Availability in the Lower Russian River Watershed

- (a) This section applies to water diversions in the Lower Russian River Watershed.
- (b) After the effective date of this regulation, when flows in the Lower Russian River Watershed are insufficient to support all diversions, the Deputy Director may issue curtailment orders to water right holders, requiring the curtailment of water diversion and use.
- (c) In determining the extent to which water is available under a diverter's priority of right or when rescinding curtailment orders, the Deputy Director shall consider:
 - (1) Relevant available information regarding date of priority, including but not limited to claims of first use in statements of water diversion and use, judicial and State Water Board decisions and orders, and other information contained in the Division of Water Rights files;

- (2) Monthly water right demand projections based on reports of water diversion and use for permits and licenses, or statements of water diversion and use, from 2017 through 2019.
 - (3) Water availability projections based on one or more of the following:
 - (A) Outputs from a United States Geological Survey's Precipitation Runoff Modeling System model, calibrated by State Water Board staff to estimate current or historical natural cumulative runoff throughout the watershed, as well as forecasts of monthly supplies;
 - (B) Climatic estimates of precipitation and temperature from the Parameter-elevation Regressions on Independent Slopes Model, commonly referred to as PRISM;
 - (C) Historical periods of comparable conditions with respect to daily temperatures, precipitation, or surface flows;
 - (D) Outputs from the Santa Rosa Plain Hydrologic Model developed by United States Geological Survey; or
 - (E) Stream gage data, where available.
 - (4) The Deputy Director may also consider additional pertinent and reliable information when determining water right priorities, water availability, and demand projections.
 - (5) Evaluation of available supplies against demands may be performed at the downstream outlet of the Lower Russian River, or at a smaller sub-watershed scale using the Drought Water Rights Allocation Tool or comparable tool.
- (d) Water users and water right holders are responsible for checking the State Water Board's drought announcements website and signing up for the email distribution list referenced in subdivision (e)(2) to receive updated water supply forecasts. It is anticipated that forecasts of water supplies available to meet water rights demands will be updated on a monthly basis until cumulative rainfall of greater than 0.5 inches occurs as measured at Healdsburg, California. Following this precipitation event, it is anticipated that forecasts of supplies will be updated on a weekly basis until rescission of all curtailment orders under this section.

(e) (1) Initial curtailment orders will be sent to each water right holder or the agent of record on file with the Division of Water Rights. The water right holder or agent of record is responsible for immediately providing notice of the curtailment order(s) to all diverters exercising the water right(s) covered by the curtailment order(s).

(2) The State Water Board has established an email distribution list that water right holders may join to receive drought notices, water supply forecasts, and updates regarding curtailments. Notice provided by email or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailment orders.

(f) Rescission of curtailment orders shall be announced using the email distribution list and web page described in subdivision (e).

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

§ 877.3 Emergency Curtailment Where Insufficient Flows are Available in the Upper Russian River Watershed

(a) This section applies to water diversions in the Upper Russian River Watershed.

(b) (1) The Deputy Director may issue a curtailment order upon a determination that the conditions in subdivision (c) are occurring. Curtailment orders shall be effective the day after issuance.

(2) If maintaining minimum flows required for the protection of minimum human health and safety needs, fish and wildlife, or further preserving stored water in Lake Mendocino for human health and safety needs would require curtailment of uses otherwise exempt from curtailment under this article, then the Deputy Director shall consider whether those uses should be allowed to continue based on the most current information available regarding fish populations, human health and safety needs, and the alternatives available to protect both human health and safety and threatened or endangered fish. Curtailment of water uses

under this subdivision (b)(2) and any updates regarding such curtailments shall be noticed as described in subdivision (d).

(c) When storage levels in Lake Mendocino are below those specified in section 877.4, and Sonoma County Water Agency is making Supplemental Storage Releases to satisfy Inbasin Uses, diversion of water within the Upper Russian River Watershed that does not meet an exemption identified in section 878 or section 878.1 constitutes an unreasonable use of water and is prohibited.

(1) Inbasin Uses are defined as diversions from the Mainstem of the Upper Russian River to meet minimum human health and safety needs, Reach Losses, and minimum flows required for protection of fish and wildlife as required by a water right permit or license term, including any enforceable modifications of the foregoing. Export diversions, deliveries scheduled by the Flood Control District pursuant to License 13898, and Reach Losses associated with those exports and deliveries are specifically excluded from the definition of Inbasin Uses.

(2) Supplemental Storage Releases are defined as water released from Lake Mendocino which is in excess of inflows to Lake Mendocino, as calculated on a daily basis, to satisfy Inbasin Uses.

(3) Reach Losses are defined as water that is lost from the Mainstem of the Upper Russian River due to riparian habitat, evaporative losses, or percolation to groundwater.

(d) (1) Initial curtailment orders will be sent to each water right holder or the agent of record on file with the Division of Water Rights. The water right holder or agent of record is responsible for immediately providing notice of the curtailment order(s) to all diverters exercising the water right(s) covered by the curtailment order(s).

(2) The State Water Board has established an email distribution list that water right holders may join to receive drought notices, water supply forecasts, and updates regarding curtailments. Notice provided by email or by posting on the State Water Board's drought web page shall be sufficient for all purposes related to drought notices and updates regarding curtailment orders.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

§ 877.4 Lake Mendocino Storage Levels

Curtailment orders for diversions in the Upper Russian River Watershed shall not be issued unless storage levels in Lake Mendocino fall below the following levels prior to the specified dates:

- (a) 29,315 acre-feet before July 1.
- (b) 27,825 acre-feet before July 15.
- (c) 26,109 acre-feet before August 1.
- (d) 24,614 acre-feet before August 15.
- (e) 22,745 acre-feet before September 1.
- (f) 21,251 acre-feet before September 15.
- (g) 20,000 acre-feet on any date while the regulation is in effect.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 109, 275, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

§ 877.5 Rescission of Curtailment Orders in Upper Russian River Watershed

- (a) Following issuance of curtailment orders pursuant to section 877.3, the Deputy Director will notify water right holders of the extent to which curtailment orders will be rescinded following a determination by the Deputy Director that Sonoma County Water Agency is no longer making Supplemental Storage Releases to satisfy Inbasin Uses and natural or abandoned flows are available.

(b) In determining the extent to which water is available under a diverter's priority of right when rescinding curtailment orders, the Deputy Director shall consider:

- (1) Relevant available information regarding date of priority, including but not limited to claims of first use in statements of water diversion and use, judicial and State Water Board decisions and orders, and other information contained in the Division of Water Rights files;
- (2) Monthly water right demand projections based on reports of water diversion and use for permits and licenses, or statements of water diversion and use, from 2017 through 2019.
- (3) Water availability projections based on one or more of the following:
 - (A) Outputs from a United States Geological Survey's Precipitation Runoff Modeling System model, calibrated by State Water Board staff to estimate current or historical natural cumulative runoff throughout the watershed, as well as forecasts of monthly supplies.
 - (B) Climatic estimates of precipitation and temperature from the Parameter-elevation Regressions on Independent Slopes Model, commonly referred to as PRISM.
 - (C) Historical periods of comparable conditions with respect to daily temperatures, precipitation, or surface flows.
 - (D) Outputs from the Santa Rosa Plain Hydrologic Model developed by United States Geological Survey; or
 - (E) Stream gage data, where available.
- (4) The Deputy Director may also consider additional pertinent and reliable information when determining water right priorities, water availability and demand projections.
- (5) Evaluation of available supplies against demands may be performed at the downstream outlet of either the Upper Russian River or the Lower Russian River, or at a smaller sub-watershed scale using the Drought Water Rights Allocation Tool or comparable tool.

(c) Water users and water right holders are responsible for checking the State Water Board's drought announcements website and signing up for the email distribution list referenced in section 877.3, subdivision (e)(2), to receive updated water supply forecasts. It is anticipated that forecasts of water supplies available to meet water rights demands will be updated on a monthly basis until cumulative rainfall of greater than 0.5 inches occurs as measured at Ukiah Municipal Airport precipitation stations within the watershed. Following this precipitation event, it is anticipated that forecasts of supplies will be updated on a weekly basis until rescission of all curtailment orders under this section.

(d) Rescission of a curtailment order shall be announced using the email distribution list and web page described in section 877.3, subdivision (e)(2).

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

§ 877.6 Rediversion of Water Previously Stored in Lake Mendocino

- (a) Rediversion by the Flood Control District of previously stored water released from Lake Mendocino shall be an unreasonable use of water and subject to the enforcement provisions described in section 879.2 unless such rediversion meets the requirements of this section.
- (b) The Flood Control District shall schedule all deliveries of water pursuant to License 13898 at least one week in advance of release of the water.
- (c) The timing of rediversion activities relative to release of water shall be based on a travel time of water along the Russian River agreed upon between the Flood Control District and Sonoma County Water Agency.
- (d) The Flood Control District shall provide a monthly schedule of rediversions by the first day of each month and shall confirm by noon on Friday of each week whether those diversions will occur in the following week or have changed.

- (e) No rediversions shall occur following September 1 unless Sonoma County Water Agency and the Flood Control District have jointly submitted an executed agreement to the Deputy Director specifying the amount of water stored in Lake Mendocino pursuant to License 13898, the amount of water that will remain stored in Lake Mendocino for use in 2022, and a methodology acceptable to the Deputy Director for determining how inflows to Lake Mendocino are attributed to the Flood Control District and SCWA's respective water rights.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 275, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.

§ 878. Non-Consumptive Uses

Diversion and use described in this section under any valid basis of right may continue after issuance of a curtailment order without further approval from the Deputy Director, subject to the conditions set forth in this section. Diversions described in this section may not be required to curtail in response to a curtailment order under this article if their diversion and use of water does not decrease downstream flows. Any diverter wishing to continue diversion under this subdivision must submit to the Deputy Director a certification, under penalty of perjury, which describes the non-consumptive use and explains, with supporting evidence, how the diversion and use do not decrease downstream flows in the applicable watershed. The Deputy Director may request additional information or disapprove any certification if the information provided is insufficient to support the statement or if more convincing evidence contradicts the claims. If a certification submitted pursuant to this section is disapproved, the diversions are subject to any curtailment order issued for that basis of right. This section applies to:

- (a) Direct diversions solely for hydropower if discharges are returned to the Russian River or its tributaries and water is not held in storage.
- (b) Direct diversions dedicated to instream uses for the benefit of fish and wildlife pursuant to Water Code section 1707, including those that divert water to a different location for subsequent release, provided the location of release is hydraulically connected to the Russian River.

- (c) Direct diversions where the Deputy Director, the California Department of Fish and Wildlife, and the Executive Officer of the North Coast Regional Board have approved a substitution of releases of either stored water or groundwater into the Russian River or a tributary thereof for the benefit of fish and wildlife such that there is not a net decrease in stream flow as a result of the diversion at the next downstream USGS gage. The rate of releases made pursuant to this subdivision must be measured daily using a device or measurement method approved by the Deputy Director and provided to the Deputy Director on a monthly basis. Proposals involving the release of groundwater shall provide sufficient data and information to reasonably quantify any depletions of surface water caused by the groundwater pumping, the potential time lags of those depletions, and if additional groundwater releases beyond the diversion amounts are able to offset those depletions. The release of water does not have to be conducted by the owner of the water right proposed for the continued diversions, provided an agreement between the water right holder and the entity releasing the water is included in the proposal.

- (d) Other direct diversions solely for non-consumptive uses, if those diverters file with the Deputy Director a certification under penalty of perjury demonstrating that the diversion and use are non-consumptive and do not decrease downstream flows in the watershed.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 187, 275, 348, Water Code

§ 878.1 Minimum Human Health and Safety Needs

- (a) Diversions described in this section under any valid basis of right may be authorized to continue after issuance of a curtailment order, subject to the conditions set forth in this section. A diversion that would otherwise be subject to curtailment may be authorized if:
 - (1) The diversion is necessary for minimum human health and safety needs; and therefore,
 - (2) The diversion is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the full extent they are capable, and that waste and unreasonable use be prevented, notwithstanding the effect of the diversions on more senior water rights or instream beneficial uses.

(b) (1) Diversions for minimum human health and safety needs under any valid basis of right of not greater than 55 gallons per person per day may continue after issuance of a curtailment order without further approval from the Deputy Director, subject to the conditions set forth in this section. Any diverter wishing to continue diversion under this subdivision must submit to the Deputy Director certification, under penalty of perjury, of compliance with the requirements of subdivisions (b)(1)(A)-(E), below. The Deputy Director may request additional information or set additional requirements on continued diversion.

(A) Not more than 55 gallons per person per day will be diverted under all bases of right.

(B) The diversion is necessary to serve minimum human health and safety needs as defined in section 877.1, subdivision (g), after all other alternate sources of water have been used. To the extent other water sources are available, those sources will be used first and the total used will not exceed 55 gallons per person per day.

(C) The diverter and all end users of the diverted water are operating under the strictest existing conservation regime for that place of use, if such a plan exists for the area or service provider, or shall be operating under such regime within 30 days. If additional approvals are required before implementation of the conservation regime, the diverter must certify that all possible steps will be taken immediately to ensure prompt approval.

(D) If the diverter is distributor of a public water supply under Water Code sections 350 et seq., that it has declared a water shortage emergency condition and either already has adopted regulations and restrictions on the delivery of water or will adopt conservation and water delivery restrictions and regulations within a timeframe specified by the Deputy Director as a condition of certification.

(E) The diverter has either pursued steps to acquire other sources of water, but has not yet been completely successful, as described in an attached report, or the diverter will pursue the steps in an attached plan to identify and secure additional water.

- (2) To the extent that a diversion for minimum human health and safety needs requires more than 55 gallons per person per day, the continued diversion of water after issuance of a curtailment order for the diversion requires submission of a petition demonstrating compliance with the requirements of subdivisions (b)(2)(A)-(F), below, and approval by the Deputy Director. The Deputy Director may condition approval of the petition on implementation of additional conservation measures and reporting requirements. Any petition to continue diversion to meet minimum human health and safety needs of more than 55 gallons per person per day must:
- (A) Describe the specific circumstances that make the requested diversion amount necessary to meet minimum human health and safety needs, if a larger amount is sought.
 - (B) Estimate the amount of water needed.
 - (C) Certify that the supply will be used only for the stated need.
 - (D) Describe any other additional steps the diverter will take to reduce diversions and consumption.
 - (E) Provide the timeframe in which the diverter expects to reduce usage to no more than 55 gallons per person per day, or why minimum human health and safety needs will continue to require more water.
 - (F) As necessary, provide documentation that the use meets the definition of minimum human health and safety needs provided in subdivision (g) of section 877.1.
- (c) For public water systems with 15 or greater connections and small water systems of 5 to 15 connections, gallons per person per day shall be calculated on a monthly basis and the calculation methodology shall be consistent with the State Water Board's "Guidance for Estimating Percentage Residential Use and Residential Gallons Per Capita Daily" dated September 22, 2020.
- (d) Diversions for minimum human health and safety needs that cannot be quantified on the basis of an amount per person per day require a petition and approval from the Deputy Director. The Deputy Director may approve a such a petition under this subdivision or subdivision (b)(2) upon a finding that the

petition demonstrates that the requested diversion is in furtherance of the constitutional policy that the water resources of the state be put to beneficial use to the full extent they are capable, and that waste and unreasonable use be prevented, notwithstanding the effect of the diversion on senior water rights or instream beneficial uses, and may condition approval as appropriate to ensure that the diversion and use are reasonable and in the public interest.

- (e) To the extent necessary to resolve immediate public health or safety threats, a diversion subject to a curtailment order may continue while a petition under subdivision (b)(2) or (d) is being prepared and is pending. The Deputy Director may require additional information to support the initial petition, information on how long the diversion is expected to continue, and a description of other steps taken or planned to obtain alternative supplies.
- (f) Notice of certification, petitions, and decisions under this section and section 878 will be posted as soon as practicable on the State Water Board's drought webpage. The Deputy Director may issue a decision under this article prior to providing notice.
- (f) Diversion and use within the Russian River Watershed that deprives water for minimum human health and safety needs in 2021, or which creates unacceptable risk of depriving water for minimum human health and safety needs in 2022, is an unreasonable use of water. The Deputy Director shall prevent such unreasonable use of water by implementing the curtailment methodology described in section 877.2 for diversions in the Lower Russian River Watershed and sections 877.3, 877.4, 877.5, and 877.6 for diversions in the Upper Russian River Watershed.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 100, 100.5, 104, 105, 106.3, 275, 1058.5, Water Code; *Environmental Defense Fund v. East Bay Muni. Util. Dist.* (1980) 26 Cal.3d 183; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976.

§ 879. Reporting

- (a) All water right holders issued a curtailment order under this article are required, within seven calendar days, to submit under penalty of perjury a certification of one or more of the following actions taken in response to the curtailment order, certifying, as applicable, that:

- (1) Diversions under the water right(s) identified have ceased;
 - (2) Any continued use is under other water rights not subject to curtailment, specifically identifying those other rights, including the basis of right and quantity of diversion;
 - (3) Diversions under the water right(s) identified continue only to the extent that they are non-consumptive uses for which a certification for continued diversion has been submitted as specified in section 878;
 - (4) Diversions under the water right(s) identified continue only to the extent that they are to provide for minimum human health and safety needs, a certification has been filed as authorized under section 878.1, subdivision (b)(1), and the subject water right authorizes the diversion in the absence of a curtailment order; or
 - (5) Diversions under the water right(s) identified continue only to the extent that they are consistent with a petition filed under section 878.1, subdivision (b)(2) or (d), and diversion and use will comply with the conditions for approval of the petition.
- (b) All water users or water right holders whose continued diversion may be authorized under section 878.1 are required to submit, under penalty of perjury, information identified on a schedule established by the Deputy Director as a condition of certification or petition approval. The required information may include, but is not limited to, the following:
- (1) The water right identification numbers under which diversions continue.
 - (2) How the diverter complies with any conditions of continued diversion, including the conditions of certification under section 878.1, subdivision (b)(1);
 - (3) Any failures to comply with conditions, including the conditions of certification under section 878.1, subdivision (b)(1), and steps taken to prevent further violations;
 - (4) Conservation and efficiency efforts planned, in the process of implementation, and implemented, as well as any information on the effectiveness of implementation;

- (5) Efforts to obtain alternate water sources;
 - (6) If the diversion is authorized under an approved petition filed pursuant to section 878.1, subdivision (b)(2), progress toward implementing the measures imposed as conditions of petition approval;
 - (7) If the diversion is authorized under section 878.1, subdivision (d):
 - (A) The rate of diversion if it is still ongoing;
 - (B) Whether the water has been used for any other purpose; and
 - (C) The date diversion ceased, if applicable.
 - (8) The total water diversion for the reporting period and the total population served for minimum human health and safety needs. The total population must include actual or best available estimates of external populations not otherwise reported as being served by the water right holder, such as individuals receiving bulk or hauled water deliveries for indoor water use.
 - (9) Diversion amounts for each day in acre-feet per day, maximum diversion rate in cubic feet per second, and anticipated future daily diversion amounts and diversion rates.
- (c) The Deputy Director, or delegee, may issue an order under this article requiring any person to provide additional information reasonably necessary to assess their compliance with this article. Any person receiving an order under this subdivision shall provide the requested information within the time specified by the Deputy Director, but not less than five (5) days.

Authority: Sections 1058, 1058.5, Water Code

Reference: Sections 100, 187, 275, 348, 1051, 1058.5, 1841 Water Code

§ 879.1. Conditions of permits, licenses and registrations

Compliance with this article, including any conditions of certification or approval of a petition under this article, shall constitute a condition of all water right permits, licenses, certificates and registrations for diversions in the Russian River Watershed.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 275, 1253, 1058.5, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.

§ 879.2. Compliance and Enforcement

- (a) A diverter must comply with a curtailment order issued under this article, any conditions of certification or approval of a petition under this article, and any water right condition under this article, notwithstanding receipt of more than one curtailment order. To the extent of any conflict between applicable requirements, the diverter must comply with the requirements that are the most stringent.
- (b) Diversion or use of water in the Upper Russian River Watershed in violation of this article constitutes an unreasonable use of water and is subject to any and all enforcement proceedings authorized by law.
- (c) Diversion or use of water in the Lower Russian River Watershed in violation of this article is a trespass under Water Code section 1052 and shall constitute evidence of diversion or use in excess of a water user's rights.
- (d) All violations of this article shall be subject to any applicable penalties under Water Code section 1058.5. Nothing in this section shall be construed as limiting the enforceability of or penalties available under any other applicable provision of law.

Authority: Sections 1058, 1058.5, Water Code

Reference: Cal. Const., Art. X, § 2; Sections 275, 1052, 1055, 1058.5, 1825, 1831, Water Code; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.